

Michigan Department of Consumer and Industry Services

Requirements for Criminal Background Checks

Nursing Homes and Homes for the Aged

Overview of Act 303 of the Public Acts of 2002

September 3, 2002

A. Who Is Covered By The New Law?

1. **Facilities:** The new Act applies to every nursing home, county medical care facility, hospital long-term care unit and home for the aged in Michigan. A facility governed by the new law is called a "Covered Facility" in this Overview.
2. **New Applicants:** The background check requirement applies to individuals that regularly provide direct services to residents who applied for and are offered employment, independent contract, or clinical privileges after May 10, 2002. The law defines "independent contract" as a contract with an individual who provides contracted services independently or with an organization or agency that employs or contracts with an individual to provide contracted services to the Covered Facility. A facility is only required to perform a criminal conviction check once-- at the time an applicant is offered employment, independent contract, or clinical privileges. However, the individual, like all other employees and contractors, must agree in writing to inform the facility immediately if they are subsequently arrested or convicted of one or more of the criminal offenses covered by the new law. See A.3 below.
3. **Current Employees and Contractors:** As a condition of continued employment, every employee or independent contractor of a Covered Facility must agree in writing to report to the facility immediately upon being arrested for or convicted of one or more of the criminal offenses covered by the new law.

B. A Covered Facility May Not Employ, Independently Contract with or Grant Clinical Privileges to Direct Caregivers with Certain Criminal Convictions

A Covered Facility may not employ, independently contract with or grant clinical privileges to an individual who will regularly provide direct services to residents if the individual has been convicted of one or more of the following:

1. Any felony, or an attempt or conspiracy to commit a felony, within the 15 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract.

2. A misdemeanor that involved abuse, neglect, assault, battery, or criminal sexual conduct against anyone or fraud or theft against a vulnerable adult (as defined under the Michigan Penal Code), or a state or federal crime that is substantially similar to such a misdemeanor, within the 10 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract.

C. Before Employment, Contracting or Granting Privileges, A Covered Facility Must Obtain and Review the Applicant's Criminal Conviction Information

1. **General Rule:** After May 10, 2002, a Covered Facility may not employ, contract with or grant privileges to an individual who will regularly provide direct services to residents unless it first obtains and reviews the applicant's criminal history information for compliance with the law. This applies to any individual who has applied for and been offered employment, an independent contract or clinical privileges after May 10, 2002.
2. **Exception for Conditional Employment or Conditional Privileges:** If a Covered Facility determines that it is necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check, it may conditionally employ or grant clinical privileges if it (a) requests the MSP to do a criminal conviction check at the time of conditional employment or privileges and (b) the applicant signs a statement which affirms that he or she does not have a conviction that would prohibit employment; and understands that he or she may be terminated if the report finds otherwise unless he or she can prove the information is incorrect. **Attachment A** is a model form for conditional employment or privileges pending a criminal background check.

This exception does not apply to pool personnel or other independent contractors. A Covered Facility must obtain and review the applicant's criminal history information before a contract is made.

An individual who knowingly provides false information regarding criminal convictions on a statement for conditional employment or clinical privileges is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00 or both.

If the criminal conviction report later confirms that an applicant given conditional employment or privileges has a criminal conviction that precludes continued employment, a Covered Facility must immediately terminate the employment or privileges.

D. Types of Criminal Background Checks

There are three types of criminal background checks that are acceptable under the new law, depending on the situation:

1. **Applicants who have already had a recent MSP check:** If the Michigan State Police (MSP) has performed an Act 303 criminal background check on the applicant for another Covered Facility or for a contract agency (such as a pool agency) within the 24 months immediately preceding the offer of employment, independent contract or clinical privileges, and the applicant provides written consent for release of the information, a Covered Facility may use that criminal background check instead of obtaining written consent and requesting a new MSP criminal background check. In this case, the Covered Facility must obtain the report by written request directly from the Covered Facility or licensed Adult Foster Care Facility that previously employed or granted clinical privileges to the applicant, or from the firm or agency (such as a pool agency) that independently contracts with the applicant. A Cover Facility should still ask the applicant whether there have been any convictions since the last criminal background check.
2. **Applicants who have resided in Michigan for 3 years or more:** If the applicant signs a written statement that he or she has been a Michigan resident for three or more years immediately preceding an offer of employment, independent contract or clinical privileges, a Covered Facility may use a name-only MSP Michigan criminal conviction report. See **Attachment B** for instructions on how to obtain a name only report from the MSP from the (MSP) on-line Internet Criminal History Access Tool (ICHAT).

If an applicant uses a false name or birth date, the information provided by an ICHAT name check will be inaccurate. A Covered Facility has the responsibility to assure that the identification provided is accurate.

Attachment B contains more information about how to request an MSP name-only criminal conviction check.

3. **Applicants who have not resided in Michigan for 3 years or more:** If the applicant has not resided in Michigan for at least three or more years immediately preceding an offer of employment, a Covered Facility must apply to the MSP for both a name check and a national criminal history fingerprint check by the Federal Bureau of Investigation (FBI). In this case the applicant must give the facility identification and fingerprints acceptable to the MSP, and written consent for the release of the information to the facility for these purposes. Upon a request for a national fingerprint search, the MSP will first run a fingerprint check for Michigan convictions, and then send its report and fingerprints to the FBI.

Attachments C and D contains more information about how to request an MSP/FBI fingerprint check.

E. Obtaining the Results

1. **Previous Employer Reports:** The criminal conviction information must be sent to the Covered Facility directly from the facility that previously employed or granted clinical privileges to the applicant, or directly from the firm or agency that independently contracts with the applicant.

2. **Name-only Conviction Reports:** The MSP will send the name-only conviction reports directly to the requesting facility. Attachment A contains more information about how to request an MSP name-only criminal conviction check.
3. **Michigan/FBI Fingerprint Reports:** The MSP will send the Michigan criminal history check search results directly to the requesting facility for all applicants. The MSP will also directly inform the facility of whether or not the national FBI fingerprint check identified any conviction record. If the national FBI fingerprint check finds a conviction record, the MSP will forward the FBI report to the MDCIS and will inform the facility that it can expect to hear from MDCIS once it reviews the report.

MDCIS will promptly review each FBI conviction report it receives from MSP to determine whether the conviction is one that precludes permanent employment. If so, MDCIS will send a summary of the results to the requesting facility. The summary will notify the facility in writing of the type of conviction disclosed--without disclosing the details of the crime. The details are confidential under federal law.

A Covered Facility must have and review both the Michigan fingerprint report from the MSP and the national FBI summary from MDCIS (if MSP has forwarded a report to MDCIS) before it permanently employs, contracts with or grants clinical privileges to an applicant who has not resided in Michigan for at least three or more years immediately preceding an offer of employment.

Attachments C and D contain more information about how to request an MSP/FBI fingerprint check.

F. Fees and Charges

1. The current MSP fee for a name only check is listed in Attachment B and the current fee for a fingerprint check is listed in Attachment C. These fees are established by MSP and are subject to change in the future.
2. A Covered Facility must pay the cost of any criminal conviction check, and may not seek reimbursement from the applicant.
3. A Covered Facility (or firm or agency that independently contracts with the applicant) may not charge a fee for forwarding an existing criminal conviction check that is requested in writing by a Covered Facility.

G. Sharing Information with Other Facilities

If a Covered Facility has already obtained criminal conviction record information on an individual under the new law, it must share it with another Covered Facility or a licensed Adult Foster Care Facility that is considering employing, independently contracting with, or granting clinical privileges to that individual if they make a written request for it. A Covered Facility may not charge another covered facility a fee for this activity. A Covered Facility will have no liability in connection with the background check of the other facility or for the release of the information, except for a knowing or intentional release of false information.

H. Retention of Criminal Conviction Check Information

A Covered Facility must retain the records of its request for criminal conviction information and the reports it reviewed so that compliance can be documented for each covered employee and so the information can be shared with other covered facilities upon written request. A Covered Facility must also retain the records of any requests made to it by other facilities for criminal conviction histories on individuals it previously employed.

I. Disclosure of Criminal Conviction Check Information

1. A Covered Facility may only use the information provided on a conviction history record for evaluating an applicant's qualifications. A Covered Facility or its employees may not disclose the information to any person who is not directly involved in evaluating the applicant's qualifications for employment, independent contract or clinical privileges.
2. A Covered Facility must provide the report information to another Covered Facility upon their written request as described in Paragraph F above.
3. A Covered Facility must provide a copy of their criminal history check to the applicant upon request.

Application for Conditional Employment Or Conditional Clinical Privileges Pending Criminal History Check

(This form has been approved by the Michigan Department of Consumer and Industry Services for use by a Nursing Home, Hospital Long-Term Care Unit, County Medical Care Facility, or Home For The Aged when it determines it is necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check as required by Section 333.20173 of the Michigan Compiled Laws.) **A health facility or agency may use this model form or create its own form that meets the minimum statutory requirements.**

Applicant Statement Regarding Criminal History Pending Criminal History Check

1. **Name of Facility:** _____

2. **Name of Applicant:** _____

3. **Application for (Check One):**

- ____ Employment
- ____ Independent Contractor
- ____ Clinical Privileges

4. **Statement Regarding Criminal History**

I hereby state that I have not been convicted of *any* of the following:

(a) A felony or an attempt or conspiracy to commit a felony *within the 15 years immediately preceding the date of this application* for employment or clinical privileges;

(b) A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan Penal Code, 1931 PA 328, MCL 750.145m¹, or a state or federal crime that is substantially similar to a misdemeanor described in this statement *within the 10 years immediately preceding the date of this application* for employment or clinical privileges.²

Application for Conditional Employment Or Conditional Clinical Privileges

¹ MCL Section 750.145m defines "vulnerable adult" as 1 or more of the following: (i) An individual age 18 or over who, because of age, developmental disability, mental illness, or physical disability requires supervision or personal care or lacks the personal and social skills required to live independently; or (ii) A person 18 years of age or older or a person who is placed in an adult foster care family home or an adult foster care small group home; or (iii) A vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, or exploited.

² A health facility or agency may not employ an individual found guilty of abusing, neglecting, or mistreating residents by a court of law or an individual that had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of resident property – regardless of the date of conviction or entry of findings in the nurse aide registry.

5. Understandings and Agreements

In consideration of this conditional employment or these conditional clinical privileges, I hereby understand and agree that, if the criminal history check conducted under Public Health Code Section 20173 does not confirm these statements, my employment or clinical privileges will be terminated by the facility as required by Section 20173(1) of that Code unless and until I can prove that the information is incorrect. The facility shall provide a copy of the results of the criminal history check conducted under Section 20173 to me upon written request.

I also understand and agree that failure to meet any conditions described in subparagraphs 4(a) and 4(b) of this statement may result in the termination of my employment or clinical privileges and that those conditions are good cause for termination.

I further understand that an individual who knowingly provides false information regarding criminal convictions in this statement is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both. (MCL 333.20173(9))

Name of Applicant (Print or Type)

Signature of Applicant

Date

How to Make a Request For A Name-Only Michigan State Police Criminal Background Check

Use this type of criminal background check if the applicant signs a written statement that he or she has been a Michigan resident for three or more years immediately preceding the offer of employment, independent contract or clinical privileges.

To Make A Written Request:

1. Provide the name, race, sex and date of birth of the person for whom you are requesting a search. A social security number, maiden name, or previous married name is also helpful.
2. Submit \$10.00 per search processing fee in the form of a money order or check made payable to the State of Michigan.
3. Provide a return address to mail back the responses.
4. Mail the above information to the Michigan State Police, Criminal Justice Information Center (CJIC), Identification Section, 7150 Harris Drive, Lansing, MI 48913.
5. Allow 3 to 5 weeks for processing and mail delivery.
6. Further questions contact the Michigan State Police at (517) 322-1956;
Fax: (517) 322-0635 or send an e-mail to the MSP Criminal Justice Information Center (CJIC) at: CJIC_applhelp@michigan.gov.

To Make An Online Request:

The MSP recently created this web page and an Internet Criminal History Access Tool (ICHAT) to allow registered employers to conduct name checks on-line for employment purposes such as checks for Michigan residents under Act 303.

The Internet address for ICHAT is: mi-mall.michigan.gov/ichat

A fee may be charged for these name searches (non-profit organizations may be exempt from the fee) and the results are returned directly to the requesting employer. If you have a web browser, contact the CJIC to be informed of your options for obtaining this service.

Only those agencies that are a 501c3 need to contact CJIC to establish a user agreement. For more information, contact warnerc@michigan.gov or phone 517-322-5546.

How to Make a Written Request For A Fingerprint Michigan State Police Criminal Background Check

- Give the applicant a Michigan Applicant Fingerprint card (RI-8). These are available from the Michigan State Police. (Attachment C is an example of the RI-8 card.)
- Tell the applicant to go to a local Michigan law enforcement agency or authorized finger print collection site, and ask to be printed on the Applicant Fingerprint card (RI-8).
- Because an FBI record check is also required by PA 303, the applicant must ask the local law enforcement agency to mark the box in Part 28 that indicates both an FBI and State search is required.
- Have the applicant return the card to you and make sure it is completely and properly filled out.
- Submit the State cards and a \$54.00 processing fee (which covers both the state and the FBI check) in the form of a money order or check made payable to the State of Michigan.
- Provide a return address in block F of the form.
- Mail the documents and information to the Michigan State Police, CJIC, Identification Section, 7150 Harris Drive, Lansing, MI, 48913.
- Allow 3 to 5 weeks for processing and return of the State and FBI response.
- For further questions contact the Michigan State Police at (517) 322-1956; Fax: (517) 322-0635 or send an e-mail to the MSP Criminal Justice Information Center (CJIC), at: CJIC_applhelp@michigan.gov.

Example of MSP RI-8 Fingerprint Form

Here is an example of the R-18 form that can be obtained from the Michigan Department of State Police.

RI-8 Form Side One

COMPLETE SECTIONS D THRU F WITH TYPEWRITER ONLY "DO NOT FOLD FINGERPRINT CARD"									
15. NAME OF APPLICANT (LAST, FIRST, MIDDLE)					16. DATE OF BIRTH			50. SID NO.	
17. RACE	18. SEX	19. HT.	20. WT.	21. HAIR	22. EYES	23. DRIVERS LIC. NO. (STATE)		24. SOCIAL SECURITY NUMBER*	
25. STATE OR COUNTY OF BIRTH		26. MARKS, SCARS, AMPS, TATTOOS, ETC.			27. ADDITIONAL NAMES (LAST, FIRST, MIDDLE)				
28. APPLICANT FOR: <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> PERSONAL USE (MCL 28.271) <input type="checkbox"/> CARRY CONCEALED WEAPON (28.426) <input type="checkbox"/> RACING COMMISSION (MCL 431.41) <input type="checkbox"/> DEBT MANAGEMENT (MCL 451.416) <input type="checkbox"/> SET-A-SIDE CONVICTION (MCL 780.621) <input type="checkbox"/> LIQUOR LICENSE (R 436.1113 & 436.1115) <input type="checkbox"/> CHILD PROTECTION (PL104-120) </div> <div style="width: 30%;"> <input type="checkbox"/> CHILD PROTECTION VOL. (PL102-120) <input type="checkbox"/> VISA/IMMIGRATION (MCL 28.271) <input type="checkbox"/> CRIMINAL JUSTICE/LAW ENFORCEMENT (MCL 28.221) <input type="checkbox"/> SOCIAL SERVICES EMPLOYMENT, DEPT. OF (DSS POLICY) <input type="checkbox"/> SECURITIES (MCL 451.602) <input type="checkbox"/> OTHER (1935 PA 59) (specify) _____ <input type="checkbox"/> RENEWAL, CARRY CONCEALED WEAPON (MCL 28.426) </div> <div style="width: 30%;"> <input type="checkbox"/> NAME CHANGE (MCL 711.1) <input type="checkbox"/> ADOPTION (MCL (28.271) <input type="checkbox"/> STATE BAR (MCL 800.949) <input type="checkbox"/> MI SCHOOL (MCL 380.1230) <input type="checkbox"/> INSURANCE (MCL 500.249 a) </div> </div>									
SEARCH REQUIREMENT Check the criminal File(s) that must be searched for the applicant reason selected. Fees will be charged according to this selection. If there is no selection, only the state file will be searched. <div style="display: flex; justify-content: space-around;"> ___ State Only ___ FBI & State ___ FBI Only </div> WAIVER: I understand the personal information and fingerprints provided on this form are used to conduct a search for prior criminal records. I hereby authorize release of my criminal information to the person or agency named below. <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%; text-align: center;"> _____ Signature </div> <div style="width: 45%; text-align: center;"> _____ Date </div> </div>									
COMPLETE THIS BOX TO INSURE CORRECT MAILING OF RESPONSE 29. SEND RESPONSE TO: Requestor ID#: _____									
NAME/AGENCY _____									
ADDRESS _____									
CITY _____ STATE _____ ZIP CODE _____									
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="font-size: 2em; font-weight: bold;">RI-8</div> <div style="font-size: 0.8em;">(9-2001)</div> </div> <div style="text-align: right; margin-top: 10px;"> APPLICANT AND PERSONAL IDENTIFICATION CARD MICHIGAN STATE POLICE Criminal Justice Information Center General Office Building, 7150 Harris Drive, Lansing, MI 48913 </div>									
<small>*Social Security Number is confidential. Disclosure of confidential information is protected by the Federal Privacy Act.</small> AUTHORITY: 1935 PA 59 / COMPLIANCE: Voluntary. IMPORTANT: INFORMATION PROVIDED ON THIS FORM MAY BE COMPUTERIZED IN STATE FILES.									

RI-8 Form, Side 2

1. NAME (LAST, FIRST, MIDDLE)				MSP USE ONLY	
2. DATE OF BIRTH	3. RACE	4. SEX	Scanned _____ Sorted _____		
5. IMPRESSIONS TAKEN BY		6. BADGE NO.	7. DATE PRINTED	10. SIGNATURE OF PERSON PRINTED (IN OWN WRITING)	
8. REVIEWED BY		9. AGENCY		11. ADDRESS	
				12. CITY	13. STATE
				12a. COUNTY	14. ZIP CODE

1. R. THUMB	2. R. INDEX	3. R. MIDDLE	4. R. RING	5. R. LITTLE					
6. L. THUMB	7. L. INDEX	8. L. MIDDLE	9. L. RING	10. L. LITTLE					
LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY		L. THUMB	R. THUMB	RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY					